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Michael Devin Floyd, IN PRO PER

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Michael Devin Floyd

Plaintiff(s),

vs.

San Jose Police Department (SJPd),  
City of San Jose,  
City of San Jose City Attorney Office,  
Officer Joshua White of SJPd,  
Officer Dakota Peters of SJPd,  
Sergeant Eugene Ito of SJPd,  
Officer David Moreno of SJPd,  
State of California

Defendant(s).

) Case No.: 3:22-cv-00751-WHO

)  
) **Response to State Of California's Motion to**  
) **Dismiss Plaintiff's First Amended**  
) **Complaint Along with Memorandum of**  
) **Points and Authorities in Support Thereof**

)  
)  
)  
) Date: June 8th, 2022

) Time: 2:00 PM

) Dept: 2

) Judge: Hon. William H. Orrick

) Trial Date: N/A

) Action Filed: Feb 04, 2022

The Plaintiff has crafted this response in opposition to the State of California's Motion to Dismiss Plaintiff's First Amended Complaint, and in support of the Plaintiff's Amended Complaint.

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## **I. Small inconsistencies**

### **A. State of California as Defendant, not Attorney General of the State of California**

Throughout the Motion to Dismiss the Plaintiff's First Amended Complaint, the State of California mentions repeatedly the Plaintiff is suing the Attorney General of the State of California. The State of California, in its individual and official capacities, is being sued in the Amended Complaint, not the Attorney General. The Motion to Dismiss repeatedly mentions the Attorney General as the Defendant and draws conclusions about jurisdiction and standing with regards to the Attorney General. (ECF No. 34-1 (MTD-SOC) after page 6.)

### **B. Plaintiff was Forced to Remain in California for Arraignment under Criminal Charges**

The State of California mentions the Plaintiff was forced to remain in California for two days due to the incident with the San Jose Police Department. (ECF No. 34-1 (MTD-SOC) at 7-11.) This is not correct. Because of the arrest on August 18th and the arraignment on August 20th, 2021, the Plaintiff was forced to remain in the San Francisco Bay Area under the Supervised Own Recognizance program of the Pretrial Services department; he is unable to leave until the conclusion of the criminal proceedings. The Plaintiff has been in California since August 18th, 2021, now almost 9 months, which has caused extreme hardships on the Plaintiff's family.

## **II. Procedural History**

Plaintiff commenced this action on February 4, 2022, with the filing of the original complaint. (ECF No. 1.) The Court dismissed Plaintiff's complaint with leave to amend to clarify several issues. (ECF No. 10.) Plaintiff filed the operative complaint on March 10, 2022. (ECF No. 14.) The First Amended Complaint named additional defendants, including the Attorney General of California in his official and individual capacity. (Id. at 11; ECF No. 16.) The State of California

1 filed the Motion to Dismiss Plaintiff's First Amended Complaint on April 28th, 2022. (ECF No. 34  
2 (MTD-SOC))

### 3 **III. Opposition to Fed. R. Civ. P. 12(b)(6)**

4 "Plaintiff's individual capacity cause of action fails to state any viable claim against the  
5 Attorney General." (ECF No. 34-1 (MTD-SOC) at 6-15.)

6 The State of California filed the Motion to Dismiss under Fed. R. Civ. P. 12(b)(6), essentially  
7 claiming the Plaintiff failed to state a claim upon which relief can be granted. The State of  
8 California never mentions the exact claims which relief cannot be granted, so it will be assumed the  
9 State of California believes all claims the Plaintiff has stated in the First Amended Complaint  
cannot be granted relief.

10 The State of California also quotes and references 2 previous court cases in the section  
11 referencing Fed. R. Civ. P. 12(b)(6). In *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), a Pakistani  
12 Muslim man was detained by the federal government shortly after the events which occurred on  
13 September 11, 2001. The Pakistani brought action against the several federal officials, claiming they  
14 violated constitutional rights. The claims alleged misconduct during his imprisonment at a  
15 maximum detainment facility, attempting to place prison guards along with high ranking superiors,  
16 such as the Director of FBI and Attorney General of the United States, responsible for the violations  
17 of constitutional rights suffered. While finding the claims were enough to supersede the qualified  
18 immunity of the prison guards, the courts struggled with determining if conclusions about the  
19 superiors' responsibility in the allegations of misconduct could warrant the removal of their  
20 qualified immunity. In this instance, the adoption of the detention and investigative policies were in  
21 response to "a national and international security emergency unprecedented in the history of the  
American Republic." *Iqbal v. Hasty*, 490 F.3d 143, at 179 (2007). Instead of resolving to conclude  
the policies were adopted to violate constitutional rights of a minority group, the obvious alternative

1 explanation was since an Arab-Islamic fundamentalist group was believed to be responsible for the  
2 attacks, “It should come as no surprise that a legitimate policy directing law enforcement to arrest  
3 and detain individuals because of their suspected link to the attacks would produce a disparate,  
4 incidental impact on Arab Muslims, even though the purpose of the policy was to target neither  
5 Arabs nor Muslims.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) Thus, qualified immunity will  
6 uphold the high ranking superiors were acting within their official capacity duties, and not  
7 deliberate indifference to constitutional rights, and those possible violations of constitutional rights  
in the complaint by the prison guards would not be sufficient to hold the superiors responsible.

8 In *Bell v. Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007), a complaint was filed against  
9 telecommunications agencies (ILECs) for parallel conduct unfavorable to competition (CLECs).  
10 The complainants allege conspiracy under the *Sherman Act* in two different claims. The  
11 complainants allege the ILECs engaged in parallel conduct which inhibited the growth of upstart  
12 CLECs. Second, the complaint claimed agreements by the ILECs to refrain from competing against  
13 one another. In both of these claims, the complainants do not provide enough factual grounds for the  
14 complaint to not be dismissed. The complainants rested their claims on descriptions of parallel  
15 conduct, not on any independent allegations of actual agreement among the ILECs. The complaint's  
16 general collusion premise fails to answer the point that the individual actions of each ILEC  
17 constitutes ordinary competitive marketplace actions. And those actions, to not help competition  
18 and to avoid competition, seem ordinary under the presented marketplace conditions.

17 How does the Plaintiff's Amended Complaint and claims differ from the cases mentioned above?  
18 The complainants in *Twombly* did not rest their case on facts, just patterns that could possibly lead  
19 to conclusions of conspiracy. Policies attempting to target the perpetrators of 9/11 that  
20 disproportionately affected Arabic Muslims could not be deemed acts violating constitutional rights,  
21 nor could the high ranking superiors be held responsible in *Ashcroft v. Iqbal*.

1 What facts and policies are the Plaintiff's claims based on? The Plaintiff attached a motion to the  
2 Amended Complaint filed in his defense during the preliminary stages of his trial for the incident  
3 that occurred with the San Jose Police Officers. In this motion, he explained the facts and policies  
4 found during research. The assemblymen in the State of California passed Assembly Bill 1591 into  
5 law in 1967. Also known as the Mulford Act, the purpose of the law was to restrict minorities from  
6 assembling with firearms, rights guaranteed to all citizens under the First (peaceful assembly) and  
7 Second (bear arms) Amendments to the US Constitution. Part of the Mulford Act is currently  
8 California Penal Code 25850. In short, the law allows peace officers, without probable cause, to  
inspect firearms in public; even more, refusal of inspection constitutes probable cause for arrest.

9 This is the distinct difference between this complaint and the cases mentioned above. *Twombly*  
10 complainants were unable to produce factual evidence, only conclusions drawn from patterns.  
11 *Ashcroft v. Iqbal* complainants could not blame legitimate policies in crisis for their adverse effects.  
12 Here, the Mulford Act's purpose and effect was to restrict constitutional rights guaranteed to all  
citizens under the Bill of Rights.

13 The Plaintiff claims this policy has affected not only him, but all citizens bearing arms under the  
14 protection of the Second Amendment to the US Constitution. Thus, through the creation and  
15 enforcement of laws in violation of the Second Amendment, the Plaintiff claims the State of  
16 California has violated 34 U.S.C. § 12601(a), 18 U.S.C. § 242, and 42 U.S.C. § 1981; along with  
17 liability for 42 U.S.C. § 1983 which the complaint is filed under.

18 **A. 34 U.S.C. § 12601(a)**

19 The Plaintiff desires, based on the claims in the complaint, the Attorney General of the United  
States impose civil action to eliminate the practices of constitutional rights violations in California.

20 Also, the statute does not solely concern the administration of juvenile justice or the incarceration  
21 of juveniles. The statute enforces punishment on government agencies "with responsibility for the



1 administration of juvenile justice or the incarceration of juveniles” for depriving “persons of rights,  
 2 privileges, or immunities secured or protected by the Constitution or laws of the United States.” 34  
 3 U.S.C. § 12601.

4 **B. 18 U.S.C. § 242**

5 A notable 18 U.S.C. § 242 can be attributed to the Rodney King event that took place in  
 6 California. In this incident of police brutality, two officers were indicted under 18 U.S.C. § 242: the  
 7 supervising officer and the officer who delivered the most blows.

8 The constitutional rights that were violated in this case differ from the 1991 King incident because  
 9 the San Jose Police Department acted in accordance with California firearm laws during the  
 10 Plaintiff’s detainment. The warrantless search was custom under California laws. Not only would  
 11 the San Jose Police Department officers be held liable, the government entity responsible for the  
 12 policy be held liable as well. The US Department of Justice must enforce this, along with 18 U.S.C.  
 13 § 241, by criminal lawsuit.

14 **C. 42 U.S.C. § 1981**

15 The State of California alleges 42 U.S.C. § 1981 is only for the enforcement of contracts. (ECF  
 16 No. 34-1 (MTD-SOC) at 11-9.) This is not the exact wording of 42 U.S.C. § 1981. The text falls  
 17 under Title 42: The Public Health and Welfare; Chapter 21: Civil Rights; Subchapter: Generally;  
 18 Section 1981: Equal Rights Under the Law; and Part (a): Statement of Equal Rights. While making  
 19 and enforcing contracts is defined and established as a right under the Statement of Equal Rights, it  
 20 is not the sole guarantee under this section. 42 U.S.C. § 1981 also mentions “to sue, be parties, give  
 21 evidence, and to the full and equal benefit of all laws and proceedings” as rights guaranteed to all  
 persons. 42 U.S.C. § 1981.

**IV. 42 U.S.C. § 1983**

**A. Monell Claims**

1 There have been successful *Monell* claims overriding the immunity of cities, counties, and other  
 2 government entities, even school boards. *Monell v. Dep't of Social Services*, 436 U.S. 658 (1978). If  
 3 a city has a policy or custom that deprived the constitutional rights of citizens, they are liable under  
 4 *Monell* for the actions of their employees and not immune from federal suit. If a police department  
 5 has a policy or custom ... , they are liable under *Monell* ... . If a county has a policy or custom ... ,  
 6 they are liable under *Monell* ... . If a school board has a policy or custom ... , they are liable under  
 7 *Monell* ... . The Defense claims the *Monell* doctrine cannot be used against the State of California.  
 This is not a fact. Here are excerpts from the decision in the *Monell* case:

8 “Indeed, municipalities simply cannot ‘arrange their affairs’ on an assumption that they can  
 9 violate constitutional rights indefinitely since injunctive suits against local officials under  
 10 [42 U.S.C.] § 1983 would prohibit any such arrangement.” *Monell v. Dep't of Soc. Servs. of*  
*City of New York*, 436 U.S. 658, 700, 98 S. Ct. 2018, 2040, 56 L. Ed. 2d 611 (1978)

11 The same can be said for the State of California. No governing body can assume violating  
 12 constitutional rights indefinitely will go unpunished.

13 “It is simply beyond doubt that, under the 1871 Congress' view of the law, were [42 U.S.C.]  
 14 § 1983 liability unconstitutional as to local governments, it would have been equally  
 15 unconstitutional as to state officers. Yet everyone—proponents and opponents alike—knew  
 16 [42 U.S.C.] § 1983 would be applied to state officers and nonetheless stated that [42 U.S.C.]  
 17 § 1983 was constitutional. And, moreover, there can be no doubt that § 1 of the Civil Rights  
 18 Act was intended to provide a remedy, to be broadly construed, against all forms of official  
 19 violation of federally protected rights. Therefore, absent a clear statement in the legislative  
 20 history supporting the conclusion that [Civil Rights Act] § 1 was not to apply to the official  
 21 acts of a municipal corporation—which simply is not present—there is no justification for  
 excluding municipalities from the ‘persons’ covered by [Civil Rights Act] § 1.” *Monell v.*

1        *Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 700–01, 98 S. Ct. 2018, 2041, 56 L.  
 2        *Ed. 2d 611* (1978)

3        The assertion that the decision in *Monell* dictates 42 U.S.C. § 1983 to solely apply to municipal  
 4        entities is false. All forms of official violations of federally protected rights are to be remedied.  
 5        And, when state laws cause violations of constitutional rights across an entire state, that state must  
 6        be held responsible under 42 U.S.C. § 1983. This is not vicarious liability; *Monell* places a  
 7        respondeat superior check on government entities' policies and customs; the State of California is  
 8        responsible for the effects of its laws.

### 8        **B. 11th Amendment**

9        The assertion that the 11th Amendment to the US Constitution grants states complete immunity  
 10        from federal suit is false. The Defendant cites the 5-4 split decision *Will v. Michigan Dep't of State*  
 11        *Police*, 491 U.S. 58, 70-71 (1989), stating *Monell* is limited to municipalities. Yet, those actions in  
 12        *Will* were brought against state officials in state court, without a claim of unconstitutionality against  
 13        a state statute. Section 5 of the 14th Amendment grants Congress “power to enforce, by appropriate  
 14        legislation,” the provisions of the 14th Amendment.

15        “Suit under § 1983 against state official in her official capacity should be treated as suit against  
 16        state, and because real party in interest in official-capacity suit is state and not named official, state's  
 17        ‘policy or custom’ must have played part in violation of federal law.” *Hafer v. Melo*, 502 U.S. 21,  
 18        112 S. Ct. 358, 116 L. Ed. 2d 301 (1991). “State executive officials are not entitled to absolute  
 19        immunity for their official actions.” See *supra*. The Supreme Court was unanimous in this decision.  
 20        If the state's policy or custom played part in the violation of federal law, then neither the state nor  
 21        its officers are entitled to absolute immunity from their official actions.

### 20        **C. 2nd Amendment Suits Pending Further Judicial Review**

1 The pending judicial review of the two cases mentioned by the State of California are about  
 2 licenses to possess guns, either openly or concealed. *Young v. Hawaii*, 992 F.3d 765, 813 (9th Cir.  
 3 2021) is about the inflexible open-carrying firearm licenses in Hawaii. *New York State Rifle &*  
 4 *Pistol Association, Inc. v. Bruen (U.S.)*, No. 20-843 concerns the concealed-carry licenses of New  
 5 York. The Plaintiff does not believe the outcomes of these cases will affect the outcome of this case.  
 6 The constitutionality of California firearm laws will be judged consistent with the Supreme Court's  
 7 decisions in *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008)  
 and *McDonald v. City of Chicago*, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010).

## 8 **V. Opposition to Fed. R. Civ. P. 12(b)(1)**

9 “The Court lacks subject matter jurisdiction over the damages claims against the Attorney  
 10 General in his official capacity. Such claims are barred by the Eleventh Amendment because  
 11 Plaintiff is essentially suing the State of California. Plaintiff has no standing to bring these  
 12 claims because the Attorney General was not involved in Plaintiff’s arrest. The Attorney  
 13 General is also not a ‘person’ who can be sued under 42 U.S.C. § 1983.” (ECF No. 34-1  
 (MTD-SOC) at 6-10.)

14 Basically, the Attorney General of the State of California believes the State of California can be  
 15 directly responsible for the violations of constitutional rights of US citizens of other states and  
 16 citizens of other countries, yet remain immune from suit in Federal court.

17 The California firearm laws in question have allowed peace officers to violate the rights of US  
 18 citizens for more than half a century.

19 Instead of seeking immunity, I pray the State of California relinquishes its immunity instead of  
 20 requiring the Court to decide... and take this responsibility like a “person” in his individual and  
 21 official capacities.

1  
2 DATED: May 6, 2022

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